Reversed.
Field
Davis

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~474.~~ 234

THE CITY COUNCIL OF CHARLESTON AND GEORGE ADDISON, APPELLANTS,

vs.

MORRIS K. JESSUP.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED DECEMBER 4, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 474.

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vs.

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1 THE UNITED STATES OF AMARICA,
District of South Carolina, to wit:

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Charleston in the district aforesaid, on the first Monday in April, 1871, before the Honorable Hugh L. Bond and the Honorable George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

MORRIS K. JESSUP
vs.
THE NORTHEASTERN RAILROAD COMPANY, The City Council of Charleston, and George Addison, city sheriff of the city of Charleston.

2 Be it remembered that, heretofore, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and seventy-one, the said Morris K. Jessup impleaded the said City Council of Charleston, and George Addison, and the Northeastern Railroad Company, in a bill of complaint for injunction and relief as follows:

3 *Subpœna.*

UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

The President of the United States of America to the City Council of Charleston, a municipal corporation, created by the laws of South Carolina, and the Northeastern Railroad Company, a corporation created by the laws of South Carolina, and George Addison, sheriff of the city of Charleston:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the twentieth day of March next, twenty days after the service thereof; then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Morris K. Jessup, a citizen of the State of New York.

And also, that you do, on the rules day next immediately after
4 the day appointed and expressed, file or cause to be filed, in the registry of said court, your plea, answer, or demurrer, to the said bill of complaint. Hereof fail not, under the pain of one hundred pounds. Given under the seal of the said court.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in South Carolina district, aforesaid, the 15th day of February, in the year of our Lord one thousand eight hundred and seventy-one, and in the ninety-fifth year of the sovereignty and independence of the United States of America.

SIMONTON & BARKER,
Complainant's Solicitors.

Which subpœna was returned endorsed as follows:

Service accepted for the City Council of Charleston and George Addison.
Feb. 16th, 1871.

D. T. CORBIN,
City Attorney for Defendants.

Service accepted for Northeastern Railroad Company.
Feb. 16th, 1871.

THEODORE G. BARKER,
Defendant's Solicitor.

5 In equity.

THE UNITED STATES,
South Carolina District, Fourth Circuit:

To the honorable the judges of the fourth circuit of the United States:

The bill of complaint of Morris K. Jessup, of the city and State of New York, against the City Council of Charleston, a municipal corporation in the State of South Carolina; the Northeastern Railroad Company, a private corporation in the State of South Carolina; and George Addison, a citizen of South Carolina, sheriff of said city, showeth unto your honors—

1. That your orator is owner of three thousand nine hundred and forty-six shares of the capital stock of the Northeastern Railroad Company, one of the defendants; that said Northeastern Railroad Company is a body corporate by an act of assembly of South Carolina, passed the sixteenth day of December, in the year eighteen hundred and fifty-two, and has, since its organization, and is now, doing business in the
6 State of South Carolina, under its charter and the amendments thereto.

That the mayor and aldermen, known as the city council of Charleston, are, by the laws of South Carolina, vested with the authority to make assessments on the inhabitants of Charleston, or those who hold taxable property within the same.

That George Addison, the defendant, holds the office of city sheriff under the laws of said State and the ordinances of said city of Charleston, and is clothed with the authority and duty of enforcing, by process of law, the payment of taxes levied under authority and by direction of the said city council of Charleston, including the power of levey and sale of the property of the persons resident and corporations doing business within the limits of said city.

Your orator further shows unto your honors that, by section first of an act of the general assembly of the State of South Carolina, passed the nineteenth day of December, A. D. 1855, entitled "An act to amend the charter of the Northeastern Railroad Company and for other purposes," it was enacted:

7 "That the stock of the Northeastern Railroad Company, and the real estate that it now owns or may hereafter acquire, which is connected with or subservient to the works authorized in the charter of said company, shall be, and the same is hereby, exempted from all taxation during the present charter of the said company."

That the grants contained in said acts of the Legislature constituting the charter of the Northeastern Railroad Company, were accepted by the company with the understanding that the same were binding upon the

State with all the force and legal sanctity of an absolute contract, the obligations whereof would be protected by the constitution of the United States, according to the terms of the contract, during the time fixed by the charter for its continuance, viz, the period of fifty years from its date.

That upon the faith of the contract so binding upon the State, the stockholders of the said company contributed their monies in payment of the capital, and the said company has expended large sums
8 in the construction and equipment of the railroad, and accomplished thereby the public purposes, in consideration of which the charter was granted by the State.

That the said railroad constitutes a great public highway of State, inter-State, and national communication and traffic, and has, since the date of its erection, been so used and enjoyed, directly and indirectly, by the citizens of South Carolina and of other States of the Union, and also by the said State in her corporate capacity, and by the Government of the United States; that thereby the said company has fully paid and discharged the consideration of its contract with the State, and is entitled to all the benefits of its charter, including the exemption from taxation above stated.

That also, upon the faith of said contract and exemption so secured to the said company, a large number of persons have, by loans of money and otherwise, become creditors of said company, and have contributed largely to the completion of the enterprise and the establishment of said public highway.

And your orator further shows to the court that the city coun-
9 cil of Charleston, without authority in law, and in direct violation of the exemption from taxation secured by contract between the company and the State, as above set forth, has proceeded to authorize and direct the assessment for taxation of certain property of the said company situate within the limits of the said city, viz, its depots, railroad yard, wharves, and other property, real and personal, necessary to the conduct of its business and essential to the convenience and enjoyment of the public at large, and has imposed a tax upon the same, and has required the said company to make return of its property for taxation, and to make payment of the said tax so assessed and levied upon the same, under certain penalties for default therein; and the treasurer of the said city, as agent of said city council, has issued execution for the amount of said tax and placed the same in the hands of the defendant, George Addison, as sheriff of said city; and the said sheriff has notified the said company that unless the said sums of money so
10 charged, assessed, and levied upon its said property is paid, he will forthwith proceed according to the law in such cases, viz, to advertize and sell the property of the said company.

Your orator further shows that he, as a stockholder of said Northeastern Railroad Company, and all the other stockholders, as well as the creditors of the corporation, are directly interested in the property so assessed and threatened, and your orator has called upon the officers of the corporation not to pay the said tax and to resist the same; but your orator is informed by the company that it is powerless in the premises, and cannot, under the laws of the said State and of the city of Charleston, prevent said property from being sold to the great detriment of the company and of the shareholders and creditors.

Wherefore, your orator, and others in like interest with himself, being remediless in the premises without the aid of this court and of its process of injunction, to the end, therefore, that the said city council of

Charleston, the said Northeastern Railroad Company, and the said
11 George Addison, sheriff of the city of Charleston, may answer the premises; that the said city council may be restrained from making any further assessments for taxes, and imposing the same upon the property of the said company; that the said Northeastern Railroad Company, its officers and agents, may be restrained now and at all times from paying said taxes and any part thereof; that the said George Addison, and his successors in the said office of city sheriff, be restrained from proceeding, by execution or otherwise, from attempting to collect said taxes and from the sale of all and any of the property of said company for that purpose, and for such other relief as to your honors may seem meet.

May it please your honors to grant unto your orator your writ of injunction, directed to the above-named The City Council of Charleston, restraining it from any further assessment for taxes upon the property of the Northeastern Railroad Company in the city of Charleston,
12 and from levying taxes upon the same; to the Northeastern Railroad Company from returning the same for taxation, and from paying any of the taxes so imposed or hereafter to be laid; and to the said George Addison, restraining him from proceeding to collect said taxes from said company by execution and other process, and from selling the said property, and any part thereof, for the purpose of collecting said taxes.

And also your writ of subpœna to be directed to said parties, directing them to appear before this honorable court on a day certain, and, under a certain penalty therein to be named, then and there to answer the premises.

And your orator will ever pray, and so forth.

SIMONTON & BARKER,
Complainant's Solicitors.

And on the 25th day of April, A. D. 1871, come into court the said City Council of Charleston and George Addison, by Corbin and Stone, their solicitors, and filed their answer to the said bill of complaint; which answer is in words and of the tenor following:

13 *Answer.*

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

MORRIS K. JESSUP, A CITIZEN OF THE STATE of New York,
against
THE CITY COUNCIL OF CHARLESTON, A MUNICIPAL corporation in the State of South Carolina; The North-eastern Railroad Company, a private corporation in the State of South Carolina; and George Addison, a citizen of the State of South Carolina. } In equity.

The joint and several answer of The City Council of Charleston and George Addison, defendants, to the bill of complaint of the said Morris K. Jessup.

These defendants, respectively, now and at all times hereafter, saving

and reserving to themselves all right of exception to the said bill of complaint, for answer thereto say:

14 1. That they do not admit that the said complainant is the bona fide owner of shares of capital stock in the Northeastern Railroad Company, and they pray strict proof thereof.

2. They admit that the North-eastern Railroad Company was incorporated by act of the general assembly of South Carolina, ratified December 16th, 1851; and that, by an act of the said general assembly, ratified the 19th day of December, 1855, it was enacted that the stock of the said company, and the real estate that it then owned, or might thereafter acquire, connected with or subservient to the works authorized in their charter, should be exempt from all taxation during the continuance of the existing charter of the said company.

3. They admit the taxation of the property of the said Northeastern Railroad Company by the said city council of Charleston for the year 1870, and that an execution has issued against the property of said company, through Stephen Thomas, as city treasurer, one of these

15 defendants, as alleged in said complainant's bill, and that George Addison, another of these defendants, has proceeded, as city sheriff of said city, to levy the same.

4. These defendants say that the charter of the Northeastern Railroad Company was, at the time of its incorporation in December, 1851, and has ever since said time been, subject to amendment, alteration, or repeal by the legislative authority under the provisions of the forty-first section of the act of the general assembly of South Carolina, ratified the 17th day of December, 1841, which section, by its own force, became a part of the charter of the said company, and an essential part of the contract alleged to have been entered into between the said Northeastern Railroad Company and the State of South Carolina.

And these defendants say that so much of the said contract or charter as provides that the same shall be subject to amendment, alteration, or repeal by the legislative authority, has not been changed by any subsequent contract in the nature of an amendment of their charter or otherwise between the said corporation and the said State; and

16 that the privileges conferred by the said act of December 19th, 1855, were conferred subject to the terms of the said forty-first section of the act of 1841 and to the provisions of the charter of the said corporation, and the same could at any time be revoked at the pleasure of the said State.

5. And these defendants further say that, under the provisions of the act of the general assembly, approved March 1st, 1870, and entitled "An act to enforce a uniform system of assessment and taxation by municipal bodies," the said city council of Charleston was authorized and required to assess all property within the corporate limits of said city at its actual value. Under the provisions of the said act, the property of the said Northeastern Railroad Company was subject to municipal taxation by the said city council for the year 1870.

6. And these defendants further say that, on the 22nd day of March, 1870, the city council of Charleston ratified an ordinance enti-

17 tled "An ordinance to raise supplies for the fiscal year ending December 31st, 1870," the first and second sections of which are as follows:

"SECTION 1. That the city appraiser is hereby authorized to assess a tax of two cents upon the dollar of the value of all real and personal property in the city of Charleston, for the purpose of meeting the expenses of the city government for the current fiscal year.

"SECTION 2. The taxes assessed under this ordinance, except such as are otherwise directed, shall be payable in three equal parts: one part on or before the tenth day of April next; another part on or before the last day of June next, and the third part on or before the last day of September next."

Under the authority of the said ordinance the said city council of Charleston, by the city appraiser, assessed a tax of two cents upon the dollar of the value of the real property of the Northeastern Railroad Company in the city of Charleston, amounting to two thousand one hundred dollars, notice of which tax was duly given to the proper officers of the said company, and payment thereof was demanded.

18 But neither the said tax nor any part thereof was paid at the time or times required by the said ordinance.

On the tenth day of February, 1870, the said city council of Charleston ratified an ordinance entitled "An ordinance to provide for the assessment and taxation of property," the forty-third and forty-eighth sections of which are as follows:

"SEC. 43. When the taxes, assessments, and penalties charged against any parcel or lot of real or personal property shall not be paid on or before the day prescribed by ordinance, a penalty of twenty per cent. thereon shall be added by the city treasurer; and if the said taxes and penalty shall not be paid within thirty days next thereafter, or collected by distress or otherwise, the penalty and said taxes shall be treated as the delinquent taxes on such real or personal property, to be collected in the manner that is or may be prescribed by law; and if the amount of such delinquent taxes, assessments, and penalties shall not be paid within thirty days next thereafter, the delinquent taxes, assessments, and penalties of the current year shall be due, and be collected

19 by the sale of such real or personal estate in the manner that is or may be required by law.

"SEC. 48. When the taxes and assessments charged against any party or property on the property return shall not be paid on or before the day prescribed by ordinance, or where the remainder of such taxes and assessments shall not be paid on or before the day prescribed by ordinance, together with the penalty on such remaining unpaid, the city sheriff, to whom the same shall be certified by the city treasurer, shall proceed to collect the same by distress or otherwise as may, at the time, be prescribed by law, together with a penalty of five per cent. on the amount so delinquent, which penalty shall be for the city sheriff as a compensation for making such collection."

The taxes assessed on the property of the Northeastern Railroad Company, as aforesaid, not having been paid to Stephen Thomas, city treasurer, as required by ordinance of the said city council, he therefore added a penalty of twenty per cent. thereon, as required by the said forty-third section of the ordinance of February 10th, 1870, and

20 certified the said tax, and the penalty added by him thereto, to the said George Addison, city sheriff, who thereupon proceeded to collect the same, as required by the said forty-eighth section of the ordinance last aforesaid, together with a penalty of five per cent. on the amount so delinquent, as a compensation for making such collection.

7. And these defendants further say that the said taxes were assessed on the real property only of the said company, as the said company has never made a return of its property for taxation, and the return made by the city appraiser of the property of said company does not include the personal property belonging to them and subject to assessment and taxation in the said city of Charleston.

8. Finally, these defendants say that they are advised and submit that all their actings and doings in the assessment and taxation
21 of the said property of the Northeastern Railroad Company, as herein stated, and in the steps which have been successively taken to secure the payment of the same, together with the penalties laid thereon for non-payment, are in strict conformity to law and ought not to be enjoined or restrained by this honorable court.

And these defendants, respectively, deny that there is any other matter or thing in said complainant's bill of complaint material or necessary for these defendants to make answer unto not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied; and the matters and things herein set forth these defendants are ready and willing to aver and prove as this honorable court shall direct, and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

CORBIN & STONE,
Defendants' Solicitors.

22 UNITED STATES OF AMERICA,
State of South Carolina, City and County of Charleston, ss:

George Addison, one of the above-named defendants, being duly sworn, says he has read the foregoing answer, and knows the contents thereof, and that the same is true to his knowledge, except as to these matters therein stated on information and belief, and as to those matters he believes it to be true.

GEO. ADDISON,
City Sheriff.

Sworn to before me this 25th day of April, 1871.

D. T. CORBIN,
Notary Public.

And on the said 25th day of April, 1871, came into court the said Northeastern Railroad Company, by Theodore G. Barker, its solicitor, and filed its answer to the said bill of complaint; which answer is in words and of the tenor following:

23 UNITED STATES OF AMERICA,
South Carolina District:

MORRIS K. JESSUP, A CITIZEN OF NEW YORK,
vs.
THE CITY COUNCIL OF CHARLESTON, THE Northeastern Railroad Company et al.

The separate answer of the Northeastern Railroad Company, one of the defendants to the bill of complaint of Morris K. Jessup, complainant.

This defendant, saving to itself all right to except to said bill, for answer to so much thereof as it is advised is material, answering, says:

That it admits that complainant is the owner of the shares of capital stock of the Northeastern Railroad Company, as stated in the bill.

That said company is a body corporate under the act of assembly named.

That the act of 1855, by which the property of the said company is exempted from all taxation, is correctly recited, and that the acts of

the legislature of the State of South Carolina, constituting the
24 charter of the said company, were accepted by it as a contract on the part of the said State with this defendant.

That, upon the faith of said exemption, the road was constructed, fully equipped, and has been conducted, since the date of the completion thereof, for the benefit of the said State and the public.

That the entire capital stock paid in and purchased since 1855, and the entire bond-debt of the corporation, and other engagements and obligations made and entered into with the company by creditors and others, have been had and done upon the faith of the said exemption from taxation therein contained, as a contract binding upon the State.

And this defendant admits that the city council of Charleston has directed the assessment for taxation of certain property of the said company situate within the limits of the city, viz, the depots, railroad yard, wharves, and other property, real and personal, at the sum
25 of thousand dollars, and has imposed a tax of per cent. upon the same, amounting to dollars, and has required this defendant to make return of said property, and also to make payment of said tax, under threat of certain penalties for default therein. And the treasurer of the said city, as agent of said city council, has issued execution for the amount of said tax, and placed the same in the hands of the sheriff of said city, who has notified the said company that, unless said sum of money so charged and levied upon its said property is paid, he will forthwith proceed according to law in such cases, which defendant is advised is to advertize and sell the property of the company.

And this defendant admits that it is powerless, under the laws of the State of South Carolina, to prevent said property from being sold.

And this defendant prays to be hence dismissed, with its reasonable costs and charges in this behalf sustained.

T. G. BARKER,
Def't's Solicitor.

26 And on the 26th day of April, 1871, the said Morris K. Jessup, by his solicitors, Simonton and Barker, filed his replication in the said court; which replication is in words and of the tenor following:

27 *Replication.*

MORRIS K. JESSUP
v.
THE CITY COUNCIL OF CHARLESTON.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had or taken to the manifold uncertainties and insufficiencies of the said defendants' answer, for replication thereto, say that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the answer of the said defendants is uncertain, evasive, and insufficient in law to be replied to by these repliants, without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto by these repliants, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

28 All which matters and things these repliants are ready to aver,

maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

SIMONTON & BARKER,
Complainant's Solicitors.

And at the said April term, A. D. 1871, of the said court, the said parties came into court, by their solicitors aforesaid, and the cause was heard upon the pleadings and processes, no evidence having been introduced by any of the parties, and the City Council of Charleston, and George Addison, defendants, admitting the ownership of stock by the said Morris K. Jessup, complainant, as alleged in the bill of complaint; and thereupon the court, upon motion of Simonton & Barker, complainant's solicitors, rendered a decree in words and of the tenor following:

29 The United States circuit court, fourth circuit, South Carolina district.

MORRIS K. JESSUP, A CITIZEN OF NEW YORK,
vs.
THE CITY COUNCIL OF CHARLESTON ET ALS. } In equity.

Hearing the bill and answer in this case, ordered that a writ of injunction do issue to the City Council of Charleston, enjoining and restraining it from collecting any and all taxes already assessed and levied, and from making any further assessment for taxes upon and collecting the same out the stock of the Northeastern Railroad Company that it now owns or may hereafter acquire, which is connected with, or subservient to, the works authorized in the charter of the said company; also that a writ of injunction do issue to the Northeastern Railroad Company, enjoining and restraining it from returning said stock and real estate for taxation, and from paying any of the taxes imposed, or which may be hereafter *be* laid thereon; and that a writ of injunction do issue to George Addison, sheriff of the city of
30 Charleston, enjoining and restraining him and his successors in office from proceeding to collect any taxes imposed, or which may be hereafter imposed, assessed, or levied upon said property.

HUGH L. BOND.

And at the said April term, A. D. 1871, the said City Council of Charleston and George Addison came into court, by Corbin and Stone, their solicitors, and then and there prayed that an appeal be granted from the said decree, rendered as aforesaid, which prayer was granted. The petition and order are in words and of the tenor following:

In equity. April term, 1871.

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

MORRIS K. JESSUP
vs.
31 THE NORTHEASTERN RAILROAD COMPANY, The City Council of Charleston, and George Addison, city sheriff of the city of Charleston.

To the honorable judges of the circuit court of the United States for the district aforesaid:

The humble petition of The City Council of Charleston, and George Addison, city sheriff of the city of Charleston, showeth:

1. That by the decree dated the 27th day of April, A. D. 1871, in the above mentioned cause, it was ordered that a writ of injunction do issue restraining your petitioners from proceeding to enforce the collection of taxes levied on the property of the said Northeastern Railroad Company, &c.

2. That the said order, dated as aforesaid, is, as your petitioners are advised and humbly submit, erroneous, and the same ought to be reversed.

Your petitioners, therefore, humbly pray that they may be al-
32 lowed an appeal from the said decree to the Supreme Court of the United States.

CORBIN & STONE,
Solicitors for Petitioners.

Appeal allowed as prayed for.
By the court:

GEORGE S. BRYAN,
U. S. Judge.

33 In equity.

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

The President of the United States of America to The Northeastern Railroad Company:

You are hereby summoned to be and appear before the judges of the Supreme Court of the United States at the Capitol, at Washington, on the first Monday of December next, then and there to join with The City Council of Charleston and George Addison, in prosecuting and appeal from the decree of this court granting a perpetual injunction against you, and the said City Council of Charleston, and George Addison, city sheriff, on the complaint of Morris K. Jessup.

And also that you do, within thirty days after the service hereof, file or cause to be filed with the clerk of the circuit court for said dis trict a notice of severance, if you do not desire to be joined with the said City Council of Charleston and George Addison, as an appellant, in the prosecution of the said appeal.

34 Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in said South Carolina district, the tenth day of April, 1871, and in the ninety-fifth year of the sovereignty and independence of the United States of America.

D. T. CORBIN,
For Appellants.
D. H. CHAMBERLAIN,
Of Counsel.

Teste:

DAN'L HORLBECK,
C. C. C. U. S. for S. C.

We acknowledge service this 7th June, 1871.
SIMONTON & BARKER.

35 In the circuit court.

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

MORRIS K. JESSUP
vs.
THE CITY COUNCIL OF CHARLESTON ET AL.

The Northeastern Railroad Company, one of the defendants in the above-entitled cause, upon whom citation has been served to join with The City Council of Charleston and others, appellants, in prosecuting an appeal from the decree of the circuit court of the United States for the district aforesaid in the above-entitled cause, hereby file in said circuit court their notice that they are content with the decree of the circuit court and do not appeal therefrom, and do hereby sever from their co-defendants on said appeal.

THEODORE G. BARKER,
Def'd't's Solicitor.

36 UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

THE CITY COUNCIL OF CHARLESTON AND George Addison, appellants,
vs.
MORRIS K. JESSUP, APPELLEE.
} In equity.

On reading the summons to the Northeastern Railroad Company to become a party to the appeal in this case from the decree entered on the 27th day of April, 1871, and the notice of the said company declining so to do, on motion of D. T. Corbin, solicitor for appellants—

Ordered, That said appellants, The City Council of Charleston, and George Addison, have leave to appeal from said decree without joining the Northeastern Railroad Company with them, as appellants.

July 10th, 18th, 1871.

GEO. S. BRYAN,
U. S. Judge, Dist. of So. Ca.

37 (Indorsed:) W. S. A., fourth circuit, S. Ca. dist. The City Council of Charleston et al. vs. Morris K. Jessup. Order of severance on appeal. D. T. Corbin, for appellants.

38 *Waiver of security.*

THE CITY COUNCIL OF CHARLESTON AND George Addison, appellant,
v.
MORRIS K. JESSUP, APPELLEE.

The appellee hereby consents that the appellants may appeal to the Supreme Court of the United States, from the decree entered in the case of Morris K. Jessup against The City Council of Charleston, the Northeastern Railroad Company, and George Addison, on the 27th day of April, 1871, without security.

SIMONTON & BARKER.

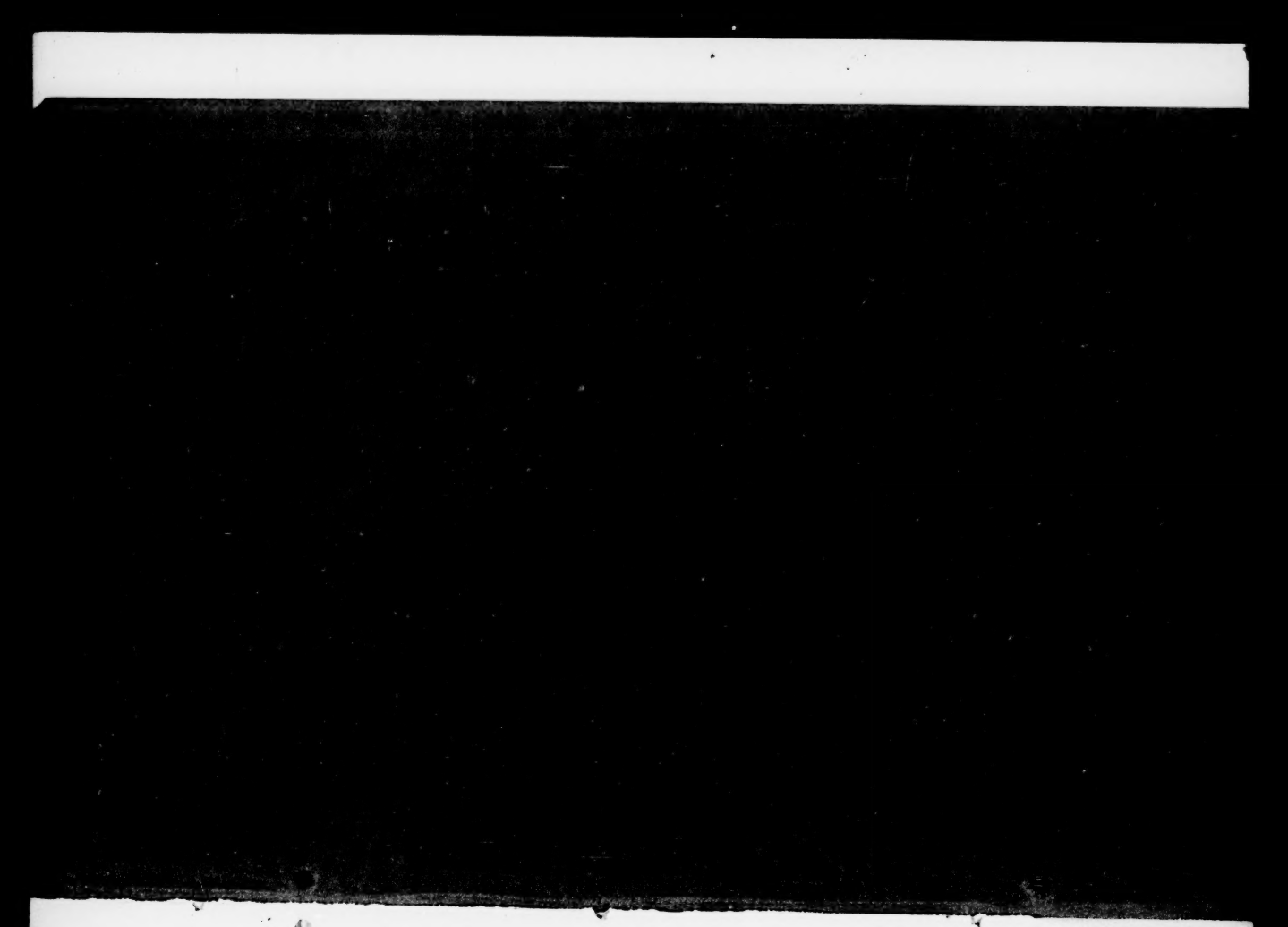
39 THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

I, Daniel Horlbeck, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing is a true and correct copy of the records and proceedings of the decree in the case of Morris K. Jessup against The Northeastern Railroad Company, the City Council of Charleston, and George Addison, rendered as aforesaid, together with all things relating to the same.

Given under my hand and the seal of the said court at the city of Columbia, in the district aforesaid, on this twenty-eighth day of November, A. D. 1871.

[SEAL.] DAN. HORLBECK,
C. C. C. U. S. for S. C.

(Indorsement on cover:) No. 474. The City Council of Charleston, and George Addison, appellants, vs. Morris K. Jessup. S. Carolina C. C. U. S. Filed 4th December, 1871.



Supreme Court of the United States.

CITY COUNCIL OF CHARLESTON, *et al.*,
Appellants.

v.

MORRIS K. JESSUP, a Citizen of New York, Appellee.

BRIEF OF APPELLEE.

I. The bill of complainant below alleged, "that by section 1st of an act of the General Assembly of the State of South Carolina, passed the 19th day of December, A. D. 1855, entitled 'An act to amend the charter of the North Eastern Railroad Company and for other purposes,' it was enacted,

"That the stock of the North Eastern Railroad Company and the real estate that it now owns or may hereafter acquire, which is connected with or subservient to the works authorized in the charter of said company, shall be and the same is hereby exempted from all taxation during the present charter of the said company.

That the grants contained in said acts of the Legislature, constituting the charter of the North Eastern Railroad Company, were accepted by the company with the understanding that the same were binding with all the force and legal sanctity of an absolute contract, the obligations whereof would be protected by the Constitution of the United States, according to the terms of the contract, during the time fixed by the charter for its continuance, viz, the period of fifty years.

That, upon the faith of the contract so binding upon the State, the stockholders of the said company contributed

their moneys in payment of the capital, and said company has expended large sums in the construction and equipment of the railroad, and accomplished thereby the public purposes in consideration of which the charter was granted by the State.

That the said railroad constitutes a great public highway of State, inter-State, and national communication and traffic, and has, since the date of its erection, been so used and enjoyed, directly and indirectly, by the citizens of South Carolina and of other States of the Union, and also by said State in her corporate capacity, and by the Government of the United States; that thereby the said company has fully paid and discharged the consideration of its contract with the State, and is entitled to all the benefits of its charter, including the exemption from taxation above stated.

That also, upon the faith of said contract and exemption, so secured to the said company, a large number of persons have, by loans of money or otherwise, become creditors of said company, and have contributed largely to the completion of the enterprise and the establishment of said public highway." (Record, pp. 2 and 3.)

The complainant in his bill thus tendered to the city council of Charleston, fully and fairly, the issue of actual as well as presumed consideration, upon which the contract of the North Eastern Railroad Company with the State is based.

The city council of Charleston, and the city sheriff, in in their answer, make no issue on the question of consideration, actual or presumed, of the contract entered into between the corporation and the State; nor of the acceptance of the grants by the company upon the understanding of an absolute contract, as matter of fact; nor of the contribution of their capital by stockholders upon the faith of such contract; nor of the expenditures of large sums by the company for the public purposes intended to be secured by the charter, in fulfillment of its part of the contract; nor did the defendants below controvert the alle-

gation that a large number of persons by loans of money became creditors of said company, and have contributed largely to the completion of the enterprise, upon the faith of said contract and exemption.

The record shows that the above allegations of the bill stand as admitted by the pleadings, and the issue of the *consideration* of the contract of exemption is concluded by the decree, and is not in the case.

II. What the defendants do say is of no force against the legal effect of an express contract admitted by the pleadings.

THE POSITIONS OF THE APPELLANTS.

"* * * That the charter of the North Eastern Railroad Company was, at the time of its incorporation, in December, 1851, and has ever since said time been, subject to amendment, alteration, or repeal by the legislative authority, under the provisions of the 41st section of the act of the General Assembly of South Carolina, ratified the 17th day of December, 1841; which section, by its own force, became a part of the charter of said company, and an essential part of the contract alleged to have been entered into between the said North Eastern Railroad Company and the State of South Carolina; * * * and that the privileges conferred by the said act of December 19, 1855, were conferred subject to the terms of said 41st section of A. A. 1841, and to the provisions of the charter, and the same could be revoked at the pleasure of the State." (Record, p. 5.)

If the exemption from taxation was a privilege conferred, and had a consideration to support it, and was accepted by the grantee, it became a contract executed, upon which the Constitution of the United States operated at once, making it irrevocable.

If the thing granted was anything at all, it immediately

vested in the grantee, and the right of the State became divested.

Bacon's Abr., Tit. Grant, vol. iv, p. 526.
Dartmouth College *v.* Woodward, 4 Wheaton, 518.

III. The acceptance by the Railroad Company of the amendment of its charter being found, the consideration is presumed, and the only question remaining in such cases for the court is, as to the terms used in the grant or contract, to determine what was granted. In the absence of doubtful words, it is the duty of the court to enforce the contract according to its terms.

Wilmington Railroad *v.* Reid, 13 Wall., p. 264.

IV. The act of 1841 was not a general law, in the sense used in the case of the Home of the Friendless *v.* Rouse, (8 Wallace,) nor in the Pennsylvania College Cases, (13 Wallace,) nor in that used in the decisions of Massachusetts, Connecticut, New York, and other States, where general statutes have prevailed, and been held to control charters of corporations granted subject to them. It has none of the important features of such general laws.

It is matter of doubt whether it is even a public act. If it be such, it expired before this exemption was granted. Its 11th section declares it to be a public act, but at the same time limits its operation to ten years, expiring A. D. 1851. It was not renewed prior to 1855.

If the 11th section be construed to refer only to the preceding ten sections, (though there is nothing in the language of the section to warrant this construction,) then it must be held, that only those ten sections of the act are "declared to be a public act," and the rest of the act, including the 41st section, not having been so declared, is a private act.

The whole act is otherwise of the nature of a special or private act, incorporating a number of towns, villages, and societies,

The 41st section, occurring at the end of the list of

private and special enactments, has its appropriate application to the charters mentioned in the previous sections—to those granted "at the present"—or "any succeeding session" of the General Assembly then representing the State.

To extend its application to the acts of subsequent Legislatures would be to bring it within the definition of "*void statutes*," or "such acts as affect or bind future Parliaments." (Dwarris on Statutes, 478.)

Acts of Parliament derogatory from the power of subsequent Parliaments bind not. (1 Blacks., 90; Cooley Con. Lim., p. 126.)

The formal, solemn, and special act of the General Assembly of 1855, granting the corporation this express exemption for a definite term of years and upon a consideration, cannot, therefore, be held to have been enacted "*subject to* the terms of the said 41st section of the act of 1841," as pretended in the answer.

V. Neither did said 41st section, as is contended, "*by its own force, become a part of* the charter of the said company, and *an essential part of the contract* alleged to have been entered into between the said North Eastern Railroad Company and the State of South Carolina."

In America, the constitution alone, by its own force, "becomes part of" legislation passed in subordination to it.

The act of 1855 must be presumed to express the entire legislative will, as to the particular subject-matter, at the time of its enactment, and to exclude every idea not expressed: it is in itself clear, complete, and express.

The only way in which this 41st section can "become a part of" the statute of 1855, is for the court to import it, constructively, as a silent term, into the late act, or presume it to have been within the intention of the Legislature. Such implication or construction would be against the fundamental rule of express contracts and statutes, viz: "EXPRESSUM FACIT CESSARE TACITUM."

The more natural, reasonable, and stronger legal presumption of intention, from the deliberate and solemn grant of the State for a certain term of years, is of the intention to *surrender*, rather than to *reserve*, the power to amend, alter, or repeal the exemption; indeed, it is so conclusive a presumption as to leave no question of intention.

VI. The 41st section of the act of 1841 cannot be read, by implication, as a clause of the A. A. 1855; because, even if it had been written in the act, it would be void as a saving clause—reserving power to the State to take away the exemption at will. "A saving totally repugnant to the body of the act is void." (1 Blacks., p. 89.)

It would likewise be void as a proviso, condition, or qualification of the grant. The act of 1855 makes an absolute grant of this exemption for a definite term of years. By the appellants' theory the 41st section of the act of 1841 comes in as a clause of the grant, and declares this *estate for years*, so granted, to be *at the will* of the State. Such a proviso would be destructive of the legislative decree—"shall be, and the same is hereby, exempted from all taxation during the continuance of the present charter."

"If a thing be granted generally, and there comes a viz, which destroys the grant, it is void, being repugnant to the thing first granted." (Bacon's Abr., Tit. 'Grant,' vol. iv, p. 526.)

"If one makes a lease for ten years, at the will of the lessor, this is a good lease for ten years certain, and the last words are void for repugnancy." (*Ib.*, 527.)

If an absolute exemption for the term of the charter was not granted by the State, then the first section of the act of 1855 was nugatory, and the State gave the corporation nothing, not even a privilege.

If it gave anything at all, it was a grant upon a consideration, and was a contract.

To suppose that the State meant to say so solemnly, "your property shall be, and hereby is, exempted from all taxation during the continuance of your present charter,"

with a silent proviso reserved, "unless I tax you," is a result of legal inference of presumed intention not according to wisdom or justice or fair dealing.

Whatever other provisions of the charter may be deemed to be subject to legislative control and regulation by virtue of the supposed implied reservation of power to amend, alter, or repeal the charter, the special grant in 1855 of this exemption seems to have been placed by the State beyond all question.

VII. Granting for the sake of the argument, that such a clause in a charter, or in a previous general law, may be good, as a reservation of legislative control, still *the extent and manner of the exercise of such power is limited.*

It has been so held in Massachusetts, one of the foremost States in maintaining the doctrine of reservation by general laws of such power over charters of corporations.

Commonwealth *v.* Essex Company, 13 Gray, 249.

The exercise of the power must not destroy the grant or impair its efficacy, and it must not interfere with vested rights, or derogate from express contracts entered into by the State with the corporation.

Commissioners on Inland Fisheries *v.* Holyoke Water Power Company, 104 Mass., 446.

VIII. Should the court hold that the act of 1841 had not expired at the end of ten years, according to the terms of the 11th section; that it is not a private act; and that its 41st section has the force and controlling effect of a general law or a clause of "general statutes;" and that it entered into and became part of the charter of the North Eastern Railroad Company, so as to authorize subsequent Legislatures to "amend, alter, or repeal" said charter: still, the appellee contends, that, before the State can impose a tax upon, or authorize a municipal corporation to assess and tax the property of, the corporation, the charter must be, first, expressly amended, altered, or repealed in

that particular, by an act passed in the clearly intended exercise of the special power reserved, and purporting to amend, alter, or repeal said charter.

Furman *v.* Nicoll, 8 Wallace, 44.

The answer of the defendants below fails to show any act of the General Assembly, purporting to amend, alter, or repeal the charter of the North Eastern Railroad Company, or any act containing, either in the body or the title of the act, any word referring to said charter, or to the said company by name, or to the act of 1855, or to the exemption from taxation thereby granted.

So far therefore as the record shows, there is not even the allegation that the Legislature has exercised its supposed reserved power "to amend, alter, and repeal" this charter, and upon that ground alone, if no other, the injunction of the circuit court must stand.

The act of the General Assembly, approved March 1, 1870, and entitled "An act to enforce a uniform system of assessment and taxation by municipal bodies," is not claimed in the answer of defendants to be an act to amend, alter, or repeal the charter of the North Eastern Railroad Company.

It is claimed that "under the provisions of said act the city council was authorized and required to assess all property within the corporate limits of said city at its actual value," and that "under the provisions of the said act, the property of the said North Eastern Railroad Company was subject to municipal taxation by the said city for the year 1870."

The replication of the complainant below denied the sufficiency of the defendants' answer, and the issue was so joined.

It is clear, that the act of Assembly of March, 1870, cannot be held to be an act "to amend, alter, or repeal the charter of the company," nor to be the special legislation of the State, passed in the exercise of the specific power

alleged to have been reserved in the charter. Nor to have been designed to repeal the special clause of the charter which contained the grant of the express and special exemption from taxation.

1. It makes no reference at all to the North Eastern Railroad Company, nor to its charter, nor to the exemption clause of the charter; nor does it either in the body or the title of the act purport to be the exercise of the power alleged to be reserved.

2. It purports to establish in general terms a uniform system of taxation by municipal bodies all over the State, without reference to particulars.

3. It purports to be passed in pursuance of a clause of the constitution of 1868, which regulated the terms upon which the General Assembly in future should vest power in municipal bodies in the State generally to assess and collect taxes upon persons and property *within their respective jurisdiction.*

4. The very clause of the constitution in pursuance of which the act purports to have been passed expressly excepts "that property heretofore exempted within the limits of municipal corporation," and the preamble of the act reciting the clause of the constitution repeats the exception *totidem verbis.*

5. If in addition to its general object, which the title and body of the act declares, it could be construed to have another and special object, viz, the amendment or repeal of a special clause of a charter of this particular corporation, it would be in violation of the clause of the State constitution, art. II, sec. 20, viz: "Every act or resolution, having the force of law, shall relate to but one subject, and that shall be expressed in its title.

6. To hold that the act of March, 1870, had special relation to the property of the North Eastern Railroad Company within the city of Charleston as an intended repeal by implication of so much of the charter as exempted that particular property, is to admit that until the act was passed the charter had not been amended, and the exemption had

not been repealed, and is also to assume that the Legislature then intended only a partial repeal of the exemption in favor of that municipal corporation, leaving the rest of the property of the Railroad Company outside of the city still exempt.

Such a forced construction, against the constitution and the rules of law and sound reason, could scarcely be held to be necessary and irresistible implication.

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